Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., and Patricia B. Windle,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power because its decision may wrongly exonerate very influential people from massive personal civil liability in a closely related case and from possible life sentences for F.A.C.E. crimes?

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings by allowing gross misuse by Appellees of the injunction approved by this Court in *Madsen* as to call for an exercise of this Court's supervisory power?

Has the United States Court of Appeals entered a decision in conflict with the rulings of the United States Supreme Court in abortion cases from *Roe* and *Doe* to *Stenberg* in which protection of the life and health of pregnant women considering abortions is of paramount concern?

Has the United States Court of Appeals entered a decision in conflict with the ruling of the United States Supreme Court in *Casey* that pregnant women considering abortion have the right to full and truthful information concerning the risks of abortion?

Has the United States Court of Appeals entered a decision in conflict with the ruling of the United States Supreme Court in *Schenck* providing for standards of conduct for pro-life counselors at abortion clinic entrances?

Has the United States Court of Appeals entered a decision in conflict with a ruling of the United States Supreme Court in *Madsen* which limited access to the buffer zone at 1564 Dixie Way, Melbourne, Florida to six named persons, three organizations and those persons acting in concert with them?

Has the United States Court of Appeals entered a decision in conflict with a ruling of the Florida Supreme Court in *Johnson v. Weiner* which provides that a business owner is liable for misuse of local police when the police action is procured, directly or indirectly, by the business owner?

Has the United States Court of Appeals entered a decision in conflict with an important decision entered by the U.S. Court of Appeals, Eighth Circuit, in *Dinwiddie*, which provided F.A.C.E. protection for a building superintendent in a large area around the abortion clinic?

Has the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court because the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by rewriting the F.A.C.E. statute in violation of Article I of the United States Constitution?

Has the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court because the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by depriving Meredith T. Raney, Jr. of equal protection under F.A.C.E.?

PARTIES TO THE PROCEEDING

"Petitioner"

Meredith T. Raney, Jr.

"Respondents"

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., and Patricia B. Windle

NOTE TO THE UNITED STATES SUPREME COURT CONCERNING PARTIES IN RELATED ELEVENTH CIRCUIT CASES:

Prospective Petitioners: Jane Roe, II of *Roe, II v. Aware Woman, et al.* U.S. Court of Appeals No.: 00-10231-DD, the F.A.C.E. action for forced abortion. Ray Sienkiewicz of *Sienkiewicz v. McDougall*, and *Sienkiewicz v. Hart, et al.*, U.S. Court of Appeals No's: 00-12634-II, 00-13805-II, and 00-14228-FF, F.A.C.E. actions for intimidating pro-life counselors with problems of judicial impropriety. Meredith T. Raney, Jr. in *Raney v. City of Melbourne* U.S. Court of Appeals No.: 00-11403-B. F.A.C.E. corollary to *Aware Woman.*

Prospective Respondents: Aware Woman Center for Choice, Inc., Patricia B. Windle and Edward W. Windle, Jr. in *Roe, II.* John McDougall in *Sienkiewicz v. McDougall* (1 and 2). Larry Hart, Janet Reno, William Clinton, Charles Wilson (of the Eleventh Circuit) and Jill Babyack in *Sienkiewicz v. Hart.* City of Melbourne, Florida in *Raney v. City of Melbourne.*

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Ninth Issue: The Petition should be granted

because the United States Court of Appeals entered a decision requiring the supervision of the United States Supreme Court since the Court of Appeals so far departed from the accepted and usual course of judicial proceedings by rewriting the F.A.C.E. statute in violation of Article I of the United States Constitution 15

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Petitioner, Meredith T. Raney, Jr., respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at *Raney v. Aware Woman Center For Choice, Inc.*, 224 F.3d 1266 (11th Cir. 2000) Appendix C. The order of the Court of Appeals denying the petition for rehearing *en banc* is reported at F.3d , Appendix D. The opinion of the District Court in *Raney v. Aware Woman Center For Choice, Inc.*, Case No.: 97-1197-CV-ORL-19B, is shown as Appendix A. The endorsed order of the District Court denying post-judgment relief is shown as Appendix B.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on August 30, 2000. The Court of Appeals denied a timely petition for rehearing *en banc* on November 6, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article 1 of the United States Constitution, which states in pertinent part:

Section 1. All legislative Powers herein

> granted shall be vested in a Congress of the United States . . .
> Section 8. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
> **(1) Right of action**.-
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> Article III, Section 2 of the United

(e) Definitions.- As used in this section:

(1) Facility.- The term "facility" includes a hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

Meredith T. Raney, Jr. became active in the pro-life cause more than 10 years ago. Like many thousands of others in this cause, his first concern was protecting the life of the unborn child. He not only wrote the obligatory letters to the newspapers and politicians, he also started taking part in various street activities (which are defined and explained in his Complaint in the exhibits hereto). The focus of this activity initially had little to do with the specific needs of the individual pregnant young women.

With time, Mr. Raney experienced a change in his outlook. He became much more cognizant of the dilemmas and crises with which the pregnant girls were confronted. As a result, he completed a crisis pregnancy counseling course and reviewed considerable material about pregnancy and its termination. He still spent time on the street in the pro-life

cause; however, by the time the incidents described in this case occurred, he was concentrating on providing reproductive health service counseling and referral information to all those in need of this help at 1564 Dixie Way, Melbourne, Florida, the Aware Woman facility for abortions and adoptions.

While Mr. Raney's help was utilized by a great number of young women, his presence resulted in a reduced net income for the abortion clinic which, in turn, hired armed policemen stationed at the facility to threaten, intimidate and obstruct these counseling and referral services. These F.A.C.E. violations are the basis for the present legal action.

A. Background

The *Raney* case presents a sea change in the pro-life activities at abortion clinics. Utilizing the legal protection of F.A.C.E. and complying with all U.S. Supreme Court decisions and state, local and federal laws, trained pro-life counselors, seek to professionally offer love and help to desperate pregnant women in abortion facilities.

As will be shown in more detail in the related case of *Roe, II v. Aware Woman*(*supra*), women must have the services of such counselors in order to avoid forced abortions and other mortal dangers such as HIV / AIDS infections about which dangers the hired help inside the clinics can say nothing and keep their jobs.

Sienkiewicz v. McDougall (*supra*), and *Sienkiewicz v.Hart* (*supra*), will demonstrate how the highest officials of our federal government, in an unlawful effort to stop these counselors and protect the pocket books of the abortion industry, engaged in a nation-wide effort to prevent the pro-life counseling from providing F.A.C.E.-protected services at abortion clinic entrances. The resulting

tragedies, including death, have been horrific for untold numbers of girls and young women.

B. The Proceedings Below.

The *Raney* Complaint was filed in the Middle District of Florida in the fall of 1997, pursuant to 28 U.S.C. §1391(b), because the claim arose in that district and also because the Defendants reside in that district. Additionally, there was original jurisdiction in federal court under 28 U.S.C. §1343(a)(4) because this is a civil action to recover damages under an Act of Congress providing for the protection of civil rights.

Following more than a year of contentious motion exchanges, the case was about to be tried on Monday, March 1, 1999 before a jury in Orlando, Florida..

On the preceding Friday afternoon, District Judge Fawsett entered an order for summary judgment, among other things, based on her *sua sponte* motion. Entry of the final judgment was delayed pending an interlocutory appeal filed by the Defendants/Appellees which was resolved in Mr. Raney's favor.

Motions for post-judgment relief were denied by a single endorsed order. Timely Notice of Appeal was filed.

Following an unsuccessful appeal to the U.S. Court of Appeals, Eleventh Circuit, this timely petition for writ of certiorari is being brought.

REASONS FOR GRANTING THE WRIT

I

THE UNITED STATES COURT OF APPEALS HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER BECAUSE ITS DECISION MAY WRONGLY EXONERATE INFLUENTIAL PERSONS FROM THE MASSIVE PERSONAL CIVIL LIABILITY IN A CLOSELY RELATED CASE AND FROM POSSIBLE LIFE SENTENCES FOR F.A.C.E. CRIMES.

As replete as the decision of the Court of Appeals is with numerous errors, justice demands that the Supreme Court exercise its supervisory powers and review the decision at hand.

The U.S. Court of Appeals has reworked the law of the case and has apparently recreated a new set of facts more to its liking. It has ruled that Meredith T. Raney, Jr. must fail in his F.A.C.E. action because he did not show that the abortion clinic controlled the police, that he was not in the facility, and that he was an unpaid volunteer.

The Court of Appeals cites as its sole authority Restatement (Second) of Agency § 1(1)(1958): "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

The Court of Appeals must have overlooked the introductory note preceding the above-stated definition which

states: "The brevity of a definition necessarily makes it an incomplete and inaccurate statement. . . . The meanings assigned are not always the same as the meanings given to the words by the courts. . . ."

There was as much "fiduciary relation" between the abortion clinic and its police - employees as there would be between a junkyard owner and his guard dogs. All the police had to do was come when called, leave when told to, bring their guns and other weapons with them, stay on the premises, threaten all whom the clinic wanted threatened and refrain from providing any services to the public or the City of Melbourne, such as enforcing local or state laws.

The record of this case shows that all of these activities were controlled by the Windles. The Court of Appeals, for whatever reason, has chosen to restate the plain facts of the case.

The Restatement (Second) of Agency § 2(2) contains a better description of the police - employees as "servants": "A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master." And so far as liability is concerned, it is stated as §219(1): "A master is subject to liability for the torts of his servants committed while acting in the scope of their employment." So too should the Windles be liable under F.A.C.E. for the threats and intimidation which they sponsored.

Black's Law Dictionary, Seventh Edition, says it even better at page 64: an "agent" is "one who is authorized to act for or in place of another". There is no doubt: Mr. Raney is correct about the Appellees' liability.

The Court of Appeals also summarily determines that Meredith T. Raney, Jr. was not seeking to provide services *in a facility* as required by 18 U.S.C. §248(c)(1)(A) even though this term "includes the building or structure in which the facility is located" 18 U.S.C. §248(e)(1). This was patently wrong.

Black's Law Dictionary, Seventh Edition, defines "structure": "Any construction, production or piece of work artificially built up or composed of parts purposefully joined together." The facility at 1564 Dixie Way, Melbourne, Florida was shown by Mr. Raney to include the walled portion around the clinic and the parking lot and the sidewalks in the *Madsen* buffer zone, all of which meet the definition of "structure". Black's also contains a definition for "building line": "A boundary drawn along the curb or the edge of a municipality's sidewalks to establish how far a building must be set away from the street to maintain a uniform appearance". Again, the counselor was *in the facility*. The record is abundantly clear on this point.

Finally, the Court of Appeals refuses Meredith T. Raney, Jr. protection under F.A.C.E. because he is a volunteer. It boggles the mind how this status would prevent one from providing written referral information to the desperate people needing such help.

This Court when deciding *Roe v. Wade*, 35 L.Ed. 2d 147(1973), reviewed with approval the recommendations of the American Public Health Association: "A wide range of individuals from appropriately trained, sympathetic volunteers to highly skilled physicians may qualify as abortion counselors". (Page 172) Emphasis added. Obviously, the extensive training and experience which this counselor has should not disqualify from F.A.C.E. protection because he is not paid for these services.

It is most unfortunate that the Court of Appeals would ignore the record which details Mr. Raney's credentials. The obvious beneficiaries are the Defendants/Appellees of a related case in the Eleventh Circuit. The victims are the millions of pregnant women who are deprived by this present errant decision of the help they so desperately need in their times of crisis.

II

THE UNITED STATES COURT OF APPEALS HAS DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY ALLOWING GROSS MISUSE BY APPELLEES OF THE INJUNCTION APPROVED BY THE UNITED STATES SUPREME COURT IN ITS *MADSEN* DECISION.

The dissent in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994), contains an ominous warning at page 2549:

> "The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need . . . What was true of a misguided military order is true of a misguided trial-court injunction. And the Court has left a powerful loaded weapon lying about today."

The majority of this Court was reasonably certain that the Windles could be trusted not to misuse a powerful private injunction. They were wrong.

The lone counselor was threatened and dragged away from a public *forum* area designated as such by the United States Supreme Court by hired gunmen working for the Windles under the pretext of enforcing the *Madsen* injunction. This is exactly what Justice Scalia had feared. Instead of

chastising the Windles for their infamy, the Court of Appeals looked the other way. The United States Supreme Court should not allow its honored trust to be so grossly abused.

III

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN ABORTION CASES FROM *ROE* AND *DOE* TO *STENBERG* IN WHICH PROTECTION OF THE LIFE AND HEALTH OF PREGNANT WOMEN CONSIDERING ABORTIONS IS OF PARAMOUNT CONCERN.

Like a rock, the United States Supreme Court has consistently decreed that the preservation of the lives and health of pregnant women were of the Court's utmost concern. So said the Court in *Roe v. Wade, (supra), Doe v. Bolton*, 35 L. Ed. 2d 201 (1973) and last year, in *Stenberg v. Carhart*, 147 L.Ed. 2d 743 (2000).

But who will warn pregnant women about the specific dangers at specific abortion clinics, dangers which include rape on the table, forced abortion, HIV-AIDS infections and many instances of unnecessary injuries or death? Certainly no one hired by the particular abortion clinic can tell women the full truth and still remain on the payroll. And the Court of Appeals has refused to protect the trained referral counselor who would warn them of these perils.

If the dangers to life and health at a particular abortion clinic are not revealed to a woman traveling hundreds of miles to an unknown community, then the Court of Appeals is expecting women to needlessly risk their lives and health, contrary to its many past rulings of the United States Supreme Court.

IV

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN *CASEY* THAT PREGNANT WOMEN CONSIDERING ABORTION HAVE THE RIGHT TO FULL AND TRUTHFUL INFORMATION CONCERNING THE RISKS OF ABORTION.

Those counselors who will speak the truth to women concerning abortion must be free of economic pressure from the abortion clinic. They must be independent and protected under F.A.C.E. from the threats and intimidation from abortion clinic personnel, including hired gunmen even if they are wearing badges.

If the decision of *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) is to have any real application, there must be localized or clinic-specific truthful information available to every customer of every abortion clinic. The danger to the life and health of pregnant young women vary greatly from clinic to clinic. The risks are never exactly the same. Also the local resources vary from neighborhood to neighborhood. Each clinic must have independent counselors out front who know the territory. The Court of Appeals decision runs counter to this life-and-death need and so must be reviewed.

V

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE RULING OF THE UNITED STATES SUPREME COURT IN *SCHENCK* PROVIDING FOR STANDARDS OF CONDUCT FOR PRO-LIFE COUNSELORS AT ABORTION CLINIC ENTRANCES.

The only personnel stationed at abortion clinics for whom standards of behavior have been approved are the pro-life counselors whose behavior at abortion clinic entrances was reviewed by the United States Supreme Court in *Schenck v. Pro Choice Network*, 519 U.S. 357(1997), where the Court allowed two pro-life counselors to engage in non-threatening conversations at the entrance to certain abortion clinics, so long as they did not obstruct ingress or egress.

Unlike the Supreme Court, the Court of Appeals is unaware of the enormous consequences to the young women and girls brought to abortion clinics; their lives and health are at stake, the consequences of wrong decisions may be irreversible. The recent decision in *Hill v. Colorado*, 147 L.Ed. 2d 597 (2000), has emphasized this Court's approval of assistance to pregnant girls and young women by pro-life referral counselors standing next to the doorway of abortion clinics.

The Court of Appeals believes that the pro-life counselors are no different from protesters and demonstrators who wish only to express their own ideas and opinions. To the contrary, the counselors seek a helping relationship which requires a private, sometimes whispered, conversation. "My boyfriend's got a gun and he's going to kill me if I don't get an abortion. Can you help me?" Or, "I've heard that a woman died here last week. What happened?" Or, "My friend was raped at an abortion clinic. Will that happen to me at this place?" Or, when exiting, "I feel so guilty. I'm going to kill myself if I don't get help. Where should I go?" These are not the kinds of communications which can be had across any distance more than a foot or two and still protect the privacy, and often the life, of the young woman who is in such danger or dire need.

Contrary to the decision in the Court of Appeals, there is in place a code of behavior for counselors such as Meredith

Raney. An examination of the record, especially the video tapes, shows that Mr. Raney complied with the standards set by this Court. A review of the appellate decision is necessary so that a grave injustice to millions of threatened young women can be erased.

VI

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH A RULING OF THE UNITED STATES SUPREME COURT IN *MADSEN* WHICH LIMITED ACCESS TO THE BUFFER ZONE AT 1564 DIXIE WAY, MELBOURNE, FLORIDA TO SIX NAMED PERSONS, THREE ORGANIZATIONS AND THOSE PERSONS ACTING IN CONCERT WITH THEM.

This Court has specified in great detail who could and could not be on the sidewalk at the abortion clinic at 1564 Dixie Way, Melbourne, Florida.

Mr. Raney was not excluded by name. In the pictures of the incidents in question, he is clearly providing the counseling and referral services by himself. He deserved federal protection under F.A.C.E. and not threats of violence and obstruction for the spurious charges that he was violating the *Madsen* injunction. Certainly the counselor is pro-life, but he is not serving pregnant women and providing for their needs unless he can first discuss those necessities with them.

In effect, the Court of Appeals has denied this assistance to numerous pregnant young women. The Supreme Court should return to pregnant women all possible assistance from pro-life counselors in order to protect their health and lives.

VII

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH A RULING OF THE FLORIDA SUPREME COURT IN *JOHNSON V. WEINER* WHICH PROVIDES THAT A BUSINESS OWNER IS LIABLE FOR MISUSE OF LOCAL POLICE WHEN THE POLICE ACTION IS PROCURED, DIRECTLY OR INDIRECTLY, BY THE BUSINESS OWNER.

Many years before the abortion clinic was located in Melbourne, Florida, the Florida Supreme Court declared that a business owner would be liable for harm done by local police, whose actions had been procured directly or indirectly by the business person. *Johnson v. Weiner*, 19 So.2d 699 (Supreme Court of Florida, 1944).

This Florida Supreme Court decision had been utilized by the U.S. District Court, Middle District of Florida, as the legal standard for determining tort liability in cases involving misuse by a business of the local police. *Gilbert v. Sears, Roebuck and Co.*, 899 F.Supp. 597 (M.D. Fla. 1995).

The decision of the Court of Appeals is at odds with the time-honored decision in *Johnson* (*supra*) and so this most important conflict should be reviewed by the United States Supreme Court.

VIII

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH AN IMPORTANT DECISION ENTERED BY THE U.S. COURT OF APPEALS, EIGHTH CIRCUIT, IN *DINWIDDIE*, WHICH PROVIDED F.A.C.E. PROTECTION FOR A BUILDING SUPERINTENDENT IN A LARGE AREA AROUND THE ABORTION CLINIC.

An important federal question was answered by the U.S. Court of Appeals in *U.S. v. Dinwiddie* 76 F.3d 913 (8th Cir. 1996) when the Court decided that the janitor or building superintendent was protected under F.A.C.E. because he played a role in the operation of the abortion business. The decision of the Court of Appeals, Eleventh Circuit, would deny F.A.C.E. protection to such a person because apparently he was not a trained professional.

Another important federal question answered in the *Dinwiddie* (*supra*) case was the extent of protection to be afforded an abortion clinic outwards from the entrance. In *Dinwiddie* (*supra*), the distance was 500 feet. In the present case, there would have been no protection.

This obvious conflict between the two appellate courts on such an important issue of national consequence should be resolved by the United States Supreme Court.

IX

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION REQUIRING THE SUPERVISION OF THE UNITED STATES SUPREME COURT BECAUSE THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY REWRITING THE F.A.C.E. STATUTE IN VIOLATION OF ARTICLE I OF THE UNITED STATES CONSTITUTION.

The U.S. Court of Appeals has completely rewritten F.A.C.E. to suit its own purposes. It has added the following changes and requirements to 18 U.S.C. §248:

1. " ATTACHED"
2. "CREDENTIALED"

3. "HEALTHCARE"
4. "PROFESSIONALS"
5. "RECOGNIZED"
6. "TRAINED"
7. "UNREGULATED"
8. "VOLUNTEER"

The drafting and redrafting of federal legislation is reserved to the Congress. Article I, Sections 1 and 8, of the U.S. Constitution is most clear on this point. The United States Supreme Court should exercise its supervisory authority in order to rectify the horrible injustice done to pregnant girls and young women by the Court of Appeals' decision.

X

THE UNITED STATES COURT OF APPEALS ENTERED A DECISION REQUIRING THE SUPERVISION OF THE UNITED STATES SUPREME COURT BECAUSE THE COURT OF APPEALS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY DEPRIVING MEREDITH T. RANEY, JR. OF EQUAL PROTECTION UNDER F.A.C.E.

The Court of Appeals was wrong to deprive the counselor of F.A.C.E. protection because of his volunteer status. The record shows that he has sufficient training and was acting in a law abiding manner at the time that he was threatened and obstructed at 1564 Dixie Way, Melbourne, Florida. Without the presence of a pro-life counselor familiar with the operation of the clinic and the local resources such as crisis pregnancy centers and shelters for abused women, there can be no truthful and non-misleading information provided to those coming to and going from the abortion clinic.

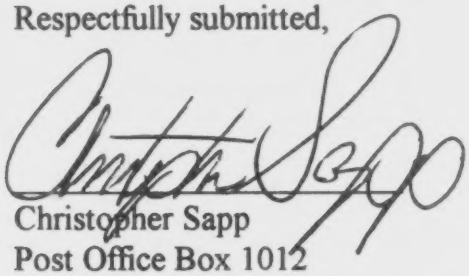
For the Court of Appeals to discriminate against this counselor as they have done is in violation of the standards approved in *Police Department Of The City Of Chicago v. Mosley*, 33 L.Ed. 2d 212 (1972). In that case, this Court stated: "As in all equal protection cases, however, the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." (page 216).

Not only is there no coherent reason for discriminating against volunteer services, it is in direct opposition to all that the United States Supreme Court has written about its concern for the life and health of pregnant young women to deprive them of the help and information they need for what may be the most important decision that they will ever make.

CONCLUSION

Meredith T. Raney, Jr. respectfully requests that this Court grant a writ of certiorari in order to protect the millions of pregnant girls and young women who so desperately need truthful information not only about the risks and dangers at each individual abortion clinic but also the resources and help available to them in that specific neighborhood. The Court of Appeals decision has gone a long way in the transformation of Abortion from a right to an obligation. The Halls of Justice must be forever free from the blood of desperate girls and young women whose lives and health are endangered by this awful decision of the Court of Appeals. The United States Supreme Court must review this judicial tragedy.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 97-1197-CV-ORL-19B
(Filed February 26, 1999)

MEREDITH T. RANEY, JR.,
Plaintiff,
v.

AWARE WOMAN CENTER FOR CHOICE, INC., a Florida corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE,
Defendants.

ORDER

This cause came before the Court on the following matters:

1) The Court's Notice to both parties that it is considering sua sponte whether summary judgment should be granted for the Defendants on the Plaintiff's Complaint (Doc. No. 121, filed February 1, 1999); AWCC Memorandum in Further Support of Motion for Summary Judgment (Doc. 122, filed February 8, 1999); Plaintiff's Memorandum Requested by the District Judge in that Order Dated February 1, 1999 (Doc. No. 128, filed February 22, 1999).

2) Defendants' Application for Stay (Doc. No. 126,

filed February 18, 1999) and Plaintiff's Response to Defendants' Application for Stay (Doc. No. 134, filed February 25, 1999).

3) Motion for Judgment on the Pleadings in Favor of the Plaintiff with Memorandum in Support Thereof (Doc. No. 116, filed January 15, 1999) and Opposition Memorandum of AWCC Defendants to Motion for Judgment on Pleadings (Doc. No. 120, filed January 28, 1999).

4) Additional Motion for Judgment on the Pleadings in Favor of the Plaintiff Together with Memorandum in Support Thereof (Doc. No. 118, filed January 20, 1999).

5) Objections to the Filing or Use of the "Deposition" of Keith Chandler and the "Deposition" of S.W. Smith (Doc. No. 132, filed February 23, 1999).

6) Third-Party Defendants' Dispositive Motion to Dismiss Third-Party Complaint (Doc. No. 91, filed November 18, 1998) and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

7) Third-Party Defendants' Motion to Vacate or for Relief from Order of September 16, 1998 (Doc. No. 92, filed November 18, 1998) and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

8) AWCC Insured Motion for Partial Summary Judgment ON Obligation of Insurers to Cover and Indemnify, and Prima Facie Showing of Insurer bad Faith - Dispositive Motion as to Law of Case on Liability of Insurers (Doc. No. 77, filed September 15, 1998); Suggestion of Default by

Insurance Third Party Defendants as to Motion of AWCC for Partial Summary Judgment (Doc. No. 89, filed November 16, 1998); and AWCC Opposition to Sphere Drake/Odyssey Motions to Dismiss Third Party Complaint and to Vacate Milburn Order (Doc. No. 96, filed December 9, 1998).

9) Plaintiff's Motion to Conduct Limited Discovery (Doc. No. 135, filed February 25, 1999) and Plaintiff's Memorandum in Support of Motion to Conduct Limited Discovery (Doc. No. 136, filed February 25, 1999).

10) Plaintiff's Motion in Limine and Memorandum in Support (Doc. No. 137, filed February 25, 1999).

11) Plaintiff's Renewed Motion for Judgment on the Pleadings and Memorandum in Support (Doc. No. 138, filed February 25, 1999).

BACKGROUND

Plaintiff, Meredith T. Raney, Jr., has brought this suit against Defendants Aware Woman Center For Choice, Inc. ("Aware Woman Center"), Edward W. Windle, Jr., and Patricia B. Windle for violation of the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), 18 U.S.C. § 248. Plaintiff asserts that he was unlawfully interfered with, threatened, and physically prevented from providing reproductive health services at a facility performing such services by the Melbourne City Police, who were allegedly acting as Defendants' agents. On three separate occasions Plaintiff contends that he was physically removed from the reproductive health services facility after having been threatened and intimidated by Melbourne City Police.

A. Summary Judgment

In the Court's February 1, 1999 Order, the Court notified both parties that it was considering sua sponte whether to grant summary judgment for the Defendants on the issue of whether the police were acting as agents for the Defendants when the Plaintiff was arrested. See Massey v. Congressional Life Ins. Co., 116 F.3d 1414, 1417 (11th Cir. 1997). The Court instructed the Defendants to file a brief and any supporting evidence with respect to the Court's sua sponte consideration of summary judgment by February 10, 1999. The Court instructed the Plaintiff to file a brief and any supporting evidence in response by February 22, 1999. Both parties have filed such briefs and supporting evidence.

Before determining whether to grant summary judgment, the Court first considers whether it has jurisdiction to consider this issue because the Defendants appealed the Court's December 16, 1999 Order under the collateral order doctrine. After a careful analysis, the Court determines that it does have such jurisdiction. However, in an abundance of caution, the Court will defer entering judgment on this order until after the interlocutory appeal is concluded.

It appears that the Court has jurisdiction because a district court retains jurisdiction where a party appeals a non-appealable order. See e.g. United States v. Hitchmon, 602 F.2d 689, 694 (5th Cir. 1979) ("[w]e are persuaded that filing a notice of appeal from a non-appealable should not divest the district court of jurisdiction"). In this case, it appears that the December 16, 1999 Order was a non-appealable order. The December 16, 1999 Order considered whether the Defendants' Motion for Summary Judgment should be granted based on Younger abstention grounds or the Rooker-Feldman doctrine. Appellate courts have declined to exercise jurisdiction under the collateral order doctrine for appeals of district court orders that involved these issues. See Bryant v. Sylvester, 57 F.3d 308, 316 (3d Cir. 1995), vacated on other grounds, 516 U.S.

1105 (1996) (holding that denial of motion to dismiss on Rooker-Feldman grounds is not immediately appealable under the collateral order doctrine); Confederated Salish v. Simonich, 29 F. 3d 1398 (9th Cir. 1994) (holding that an order denying a motion to abstain under the Younger abstention grounds was not immediately appealable under the collateral order doctrine); Coleman by Lee v. Stanziani, 735 F.2 118, 119-20 (3d Cir. 1984) (holding that the denial of a motion to dismiss on Younger Abstention grounds was not immediately appealable under the collateral order doctrine).[1]

Accordingly, the Court now examines whether it should grant summary judgment for the Defendants. In his Complaint, the Plaintiff alleges that the Defendants violated 18 U.S.C. § 248 when he "was unlawfully interfered with, threatened, and physically prevented from providing reproductive health services by the Melbourne City Police who, as agents of and taking direction from the Defendants, threatened Plaintiff with physical removal from the facility and then physically took Plaintiff away from the facility." (Doc. No. 1 at ¶ 15, filed October 1, 1997). Because the record does not reflect any colorable evidence that the Melbourne City Police were acting as agents of the Defendants, the Court finds

[1]However, the Court notes that if the December 16, 1998 Order is an appealable order, then it is less clear whether the Court should proceed. Cf. 15A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3911 (1991) (indicating a trial court may undertake further proceedings following collateral order appeals); Taylor v. Sterrett, 640 F.2d 663, 667-68 (5th Cir. Unit A 1981) (indicating that where appeal is allowed from an interlocutory order that the district court may only proceed with matters not involved in the appeal); United States v. Neumann, 556 F.2d 1218, 1219 (5th Cir. 1977) (dismissing a collateral order appeal as moot as noted above, the Court will defer entering judgment on this order until the interlocutory appeal is concluded.

that summary judgment is warranted.

In order to establish the existence of an agency relationship, the record must reflect some evidence that the alleged principal had the right to control the behavior of the alleged agent. See Restatement (Second) of Agency § 1 (1958) ("[a]gency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act"); see also General Building Contractors Ass'n, Inc. v. Pennsylvania, 458 U.S. 375, 392 (1982); State v. American Tobacco Co., 707 So.2 851, 854 (Fla. Dist. Ct. App. 1998). Based on this requirement, a number of courts have held that police officers were not agents of defendants as a matter of law where the record did not reflect evidence that the defendants controlled the actions of the police officers. See Johnston v. Warren County Fair Ass'n, Inc., 110 F.3d 36, 38 (8th Cir. 1996) (finding that police officers were not agents of the defendant where the plaintiff did not contend that the defendant hired the police department to perform security work and where the plaintiff did not offer evidence that the defendant's actually controlled the police officers); McGeorge v. Continental Airlines, Inc., 871 F.2d 952, 955 (10th Cir. 1989) (affirming dismissal against defendant where the trial court "ruled that plaintiff could not show defendant had control over the officer, and without control the officer could not have been [the defendant's] agent") Hingson v. Pacific Southwest Airlines, 743 F.2d 1408, 1416 (9th Cir. 1984) (affirming directed verdicts where there was no evidence that the defendant had the right to control the police officers).

In this case, the record reflects evidence that the Defendants notified the Melbourne City Police when abortions were being performed, that the police patrolled the area on such occasions, and that the Defendants compensated them.

(Doc. No. 129, filed February 22, 1999; Doc. No. 130, filed February 22, 1999; Doc. No. 131, filed February 22, 1999). Also, the Defendants stated in their Motion to Dismiss that they notified the police that the Plaintiff was violating the injunction. (Doc. No. 128; Doc. No. 8, filed February 22, 1999). There is undisputed evidence that the police independently observed the Plaintiff violated the injunction before arresting him. (Doc. No. 122, Exh. 1). Such evidence when viewed in a light most favorable to the Plaintiff is not sufficient for a reasonable jury to find that the Defendants controlled the Melbourne City Police. Thus, the Court finds that a reasonable jury could not find that the Melbourne City Police were agents of the Defendants. See Johnston, 110 F.3d at 38 (finding as a matter of law that the police officers' routine patrolling of the fair was insufficient to create an agency relationship); McGeorge, 871 F.2d at 955 (finding as a matter of law that police officers were not agents of the defendant where the defendant summoned the officers); Hingson 743 F.2d at 1416 (finding as a matter of law that police officers were not agents of defendant airline where airline requested police assistance); Mahon v. City of Bethlehem, 895 F.Supp. 310, 312 (E.D. Pa. 1995) (finding that police officers were not agents of the defendant even though the police were paid and the police enforced some of the defendant's rules where the defendant did not have discretion over enforcement decisions); Leach v. Penn-Mar Merchants Ass'n, 308 A.2d 446, 450 (Md. Ct. App. 1979) (finding as a matter of law in a Section 1983 action that the defendant did not act in concert with the police where the police conducted their own investigation).

Accordingly, the Court grants summary judgment for the Defendant on the Plaintiff's Complaint.

B. Plaintiff's Motions For Judgment on the Pleadings

Plaintiff has filed two motions for judgment on the pleadings because the Defendants allegedly did not comply with the Court's Case Management and Scheduling Order. These motions are denied.

C. Third-Party Defendant's Motion to Dismiss Third Party Complaint

Defendants filed a Third Party Complaint against Third Party Defendants Sphere Drake Insurance Company PLC and Westco Claims Management Company, Inc. for indemnification.

Third Party Defendants have moved to dismiss for lack of subject matter jurisdiction because the Third Party Complaint fails to properly allege diversity of citizenship. "When jurisdiction depends on citizenship, citizenship should be 'distinctly and affirmatively alleged.'" McGovern v. American Airlines, Inc., 511 F. 2d 653, 654 (5th Cir. 1975). A corporation is deemed to be a citizen of any state in which it is incorporated and any state where it has its principal place of business. See 28 U.S.C. 1332 (c)(1). The Third Party Complaint fails to allege the principal place of business or the state of incorporation of either of the Third Party Defendants. (Doc. No. 75, filed August 31, 1998). Thus, the Court cannot exercise subject matter jurisdiction based on diversity of citizenship. See Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994); McGovern, 511 F.2d at 654; Delome v. Union Barge Co., 444 F.2d 225, 233 (5th Cir. 1971).

The Court also declines to exercise supplemental jurisdiction over the Third Party Complaint. The Court may decline to exercise supplemental jurisdiction over a claim if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367 (c)(3). "Where § 1367 (c) applies, considerations of judicial economy, convenience, fairness, and comity may influence the court's discretion to

exercise supplemental jurisdiction." See Baggett v. First National Bank of Gainesville, 117 F.3d 1342, 1353 (11th Cir. 1997); see also Nobles v. Alabama Christian Academy, 917 F.Supp. 786, 790 (M.D. Ala. 1996). The state law questions involved in this case should be decided by a state court. See Baggett, 117 F.3d 1353. This is especially true because summary judgment will be granted on the Plaintiff's Complaint before trial. See id.[2] Thus, the Third Party Complaint is dismissed without prejudice.

CONCLUSION

Based on the foregoing, the Court rules as follows:

1) Summary judgment is **GRANTED** sua sponte in favor of the Defendants on Count I, II, and III of the Plaintiff's Complaint (Doc. No. 1). However, the Court defers entering judgment until the conclusion of the interlocutory appeal. Thus, the Clerk is directed not to enter judgment until the interlocutory appeal is concluded.

2) Because the Defendants have voluntarily dismissed their counterclaims (Doc. No. 106), a trial is not necessary in this case.

3) Defendants' Application for a Stay (Doc. No. 126) is **DENIED AS MOOT**.

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[2]The Court notes that the outcome of the interlocutory appeal does not effect this determination. If the Defendants are successful on their interlocutory appeal, then the Plaintiff's Complaint will be dismissed on those grounds. If the Defendants are unsuccessful on their interlocutory appeal, then summary judgment will be entered on the Plaintiff's Complaint.

4) The Motion for Judgment on the Pleadings in Favor of the Plaintiff (Doc. No. 116) is **DENIED**.

5) The Additional Motion for Judgment on the Pleadings in Favor of the Plaintiff (Doc. No. 118) is **DENIED**.

6) The Objections to the Filing or Use of the "Deposition" of Keith Chandler and the "Deposition" of S.W. Smith (Doc. No. 132) are **DENIED AS MOOT**. The Court did not rely on these depositions in deciding whether to grant summary judgment.

7) Third-Party Defendants' Dispositive Motion to Dismiss Third-Party Complaint (Doc. No. 91) is **GRANTED IN PART**. The Third Party Complaint (Doc. No. 75) is **DISMISSED WITHOUT PREJUDICE**. The Third Party Plaintiffs shall have ten (10) days from the date that the mandate of the Eleventh Circuit is issued with reference to the current appellate proceedings to file an amended pleading.

8) Third-Party Defendants' Motion to Vacate or for Relief from Order of September 16, 1998 (Doc. No. 92) is **DENIED AS MOOT**.

9) AWCC Insured Motion for Partial Summary Judgment on Obligation of Insurers to Cover and Indemnify, and Prima Facie Showing of Insurer Bad Faith (Doc. No. 77) is **DENIED AS MOOT**.

10) Plaintiff's Motion to Conduct Limited Discovery (Doc. No. 135) is **DENIED AS MOOT**.

11) Plaintiff's Motion in Limine (Doc. No. 137) is **DENIED AS MOOT**.

12) Plaintiff's Renewed Motion for Judgment on the

Pleadings (Doc. No. 138) is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 26th day of February, 1999.

/s/
PATRICIA C. FAWSETT
UNITED STATES
DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MEREDITH T. RANEY, JR.,
Plaintiff,

v. **CASE NO.: 97-1197-CIV-ORL-19B**

AWARE WOMAN CENTER FOR CHOICE, INC., a Florida corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE,
Defendant.
_____/

MOTION TO ALTER OR AMEND JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT AND MEMORANDUM IN SUPPORT OF EACH MOTION

MOTION TO ALTER OR AMEND JUDGMENT

Meredith T. Raney, Jr., the Plaintiff by and . . . .

DENIED and SO ORDERED this

13th day of September, 1999

/s/
Patricia C. Fawsett
United States District Judge
(Filed: Aug. 23, 1999 AM 9:45)

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

(Filed August 30, 2000)

No. 99-14122

D. C. Docket No. 97-01197-CIV-ORL-19

MEREDITH T. RANEY, JR.,

Plaintiff-Appellant,

versus

AWARE WOMAN CENTER FOR CHOICE, INC. a Florida Corporation, EDWARD W. WINDLE, JR., and PATRICIA B. WINDLE, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Middle District of Florida

(August 30, 2000)

Before BIRCH, CARNES and BARKETT, Circuit Judges

PER CURIAM:

Meredith T. Raney, Jr. appeals from the grant of summary judgment to Aware Woman Center for Choice, Inc. (the "Woman Center"), Edward W. Windle, Jr. and Patricia Windle (collectively "Defendants") on his claim brought pursuant to the Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248 (2000) (the FACE Act"), which guarantees

freedom of access to the entrances of reproductive health facilities. Raney also appeals from the denial of his two post-judgment motions to alter or amend the judgment. We affirm.

On three occasions, police officers in the city of Melbourne physically removed Raney from the entrance to the Woman Center and charges him with having violated a state court injunction, upheld in Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994) (the "Madsen injunction"), that prohibits anti-abortion protesters from entering a specified 36-foot buffer zone in front of the Woman Center. In his Complaint, Raney alleged that the police officers, as agents of the Defendants, prevented him from providing counseling services to women and men as they were entering and leaving the Woman Center and thus violated his rights, protected under the FACE Act. The district court, finding that Raney could establish no factual basis for his claim that the city police were agents of the Defendants, dismissed the Complaint. The district court also twice denied Raney's motions to alter or amend the judgment, through which he sought to introduce additional deposition testimony in support of his agency claim.

We review de novo the district court's order granting summary judgment, viewing the record and all its inferences in favor of the nonmoving party. See Arrington v. Cobb County, 139 F.3d 865, 871 (11th Cir. 1998). Summary judgment is proper of there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Irby v. Bittick, 44 F.3d 949, 953 (11th Cir. 1995) (citing Fed.R.Civ.P.56(c). We review a district court's denials of motions to alter or amend a judgment for abuse of discretion. Mays v. U.S. Postal Service, 122 F.3d 43, 46 (11th Cir. 1997).

On appeal, Raney first reasserts his claim that the city police, in enforcing the Madsen injunction, acted as agents of the Defendants. We have reviewed the record, and we agree

with the district court that the affidavits that Raney has produced do not support his agency claim. "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) of Agency § 1(1)(1958). The affidavits submitted in support of Raney's claim establish only that city police were deployed to enforce the Madsen injunction on days when abortion procedures were performed at the Woman Center. While the record indicates that the Defendants cooperated with the police and notified them when the Woman Center's clients and employees would need protection, it does not suggest that the police were subject to the Defendants' control. Accordingly, we find that the district court did not err in awarding the Defendants summary judgment on the ground that Raney could not show that the police acted as the Defendant's agents.

In addition, because Raney cannot state a cause of action under the FACE Act, we also find that the district court did not abuse its discretion in denying Raney's post-judgment motions to amend the judgment. A FACE Act action may be brought "only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services *in a facility* that provides reproductive health services. . . ." 18 U.S.C. §248(c)(1)(A) (emphasis added). The statute defines "facility" to include "a hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located." 18 U.S.C.§248(e)(1). The "reproductive health services" protected under the statute must be provided "in a hospital, clinic, physicians office, or other facility . . ."18 U.S.C.§248(e)(5).

By requiring that the person bringing a FACE action be seeking or providing reproductive health services in a facility,

Congress recognized the difference between trained professionals who work in credentialed facilities and unregulated volunteer counselors who are not attached to recognized providers of reproductive healthcare. On each of the three occasions when Raney was arrested for violating the Madsen injunction, he was standing on a sidewalk outside of the Woman Center clinic. He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access.[1]

Accordingly, the order of the district court is AFFIRMED.

[1]Because we find that Raney cannot bring a cause of action under the FACE Act, we need not determine whether he qualifies as a "counselor" under the FACE Act.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

(Filed November 6, 2000)

No. 99-14122-II

MEREDITH T. RANEY, JR.
Plaintiff-Appellant

versus

AWARE WOMAN CENTER FOR CHOICE, INC.
a Florida Corporation
EDWARD W. WINDLE, JR.,
PATRICIA B. WINDLE,
JOHN DOES 1-X
JANE DOES, 1-X, et al,
Defendants-Appellees.

On appeal from the United States District Court for the
Middle District of Florida

ON PETITION FOR REHEARING AND PETITION(S)
AND REHEARING EN BANC

Before: BIRCH, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing

en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5) the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT.

/s/_____
Rosemary Barkett
UNITED STATES CIRCUIT JUDGE